

MEMO ENDORSED

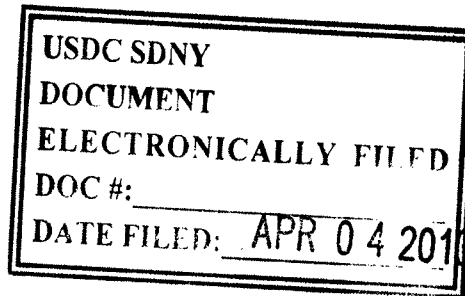
KIRBY McINERNEY LLP

825 Third Avenue  
New York, NY 10022  
212.371.6600  
Fax. 212.751.2540  
WWW.KMLLP.COM

VIA E-MAIL

April 1, 2013

Honorable Alison J. Nathan  
United States District Judge  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Courtroom 23-B  
New York, New York 10007-1312



Of Counsel  
Roger W. Kirby  
Alice McInerney

Re: *Rothstein et al. v. GMAC Mortgage, LLC, et al.*, 1:12-cv-03412 (AJN)

Dear Judge Nathan:

We represent plaintiffs in the above-referenced matter. We write to request leave to supplement the record with respect to our opposition to the Balboa defendants' motion to dismiss the Second Amended Class Action Complaint (the "SAC").

Since we filed our opposition papers, two relevant events have occurred: (i) on March 22, 2013, GMAC Mortgage, LLP ("GMACM") servicing client American Residential Equities ("ARE") filed an amended complaint in its adversary proceeding against GMACM and Balboa; and (ii) on March 26, 2013, the Federal Housing Finance Agency (the "FHFA"), the conservator of Fannie Mae and Freddie Mac, issued a notice seeking comment on a proposed new rules that would prohibit mortgage servicers such as GMACM from receiving remuneration from sellers of lender-placed insurance such as Balboa.<sup>1</sup>

We request leave to file a supplemental declaration annexing copies of the relevant documents for inclusion in the record. We believe that these documents further substantiate the allegations in the SAC. The amended pleading filed by ARE expands on ARE's initial allegations of fraud and breach against GMACM and Balboa, which are described at ¶¶ 104-05 of the SAC. The FHFA notice follows up on a Fannie Mae initiative, described at ¶¶ 89-99 of the SAC, to prevent the type of overcharges alleged in the SAC.

Balboa does not oppose this request. Specifically, counsel for Balboa states that "the Balboa Defendants do not believe that either document is relevant to their motion but do not oppose Plaintiffs' request."

---

<sup>1</sup> See First Am. Compl., *American Residential Equities, LLC, v. GMACM Mortgage, LLC, et al.*, Adv. Case No. 12-01934 (MG) (Bankr. S.D.N.Y. Mar. 22, 2013) (ECF No. 26), and Lender Placed Insurance, Terms and Conditions, 78 Fed. Reg. 19263 (Mar. 29, 2013).

Hon. Alison J. Nathan  
Page 2

Respectfully submitted,

/s/ Mark A. Strauss  
Mark A. Strauss

cc. Richard G. Haddad, Esq. (by e-mail)  
Matthew C. Previn, Esq. (by e-mail)  
Ross E. Morris, Esq. (by e-mail)  
Katherine L. Halliday, Esq. (by e-mail)  
Robyn C Quattrone, Esq. (by e-mail)

Plaintiffs may file a supplemental declaration by April 8, 2013. The declaration may not exceed four double-spaced pages in length and is to be strictly limited to discussion of the "events" listed above. Should Defendants choose to, they may respond to Plaintiffs' declaration by April 12, 2013, subject to the same page limitation. SO ORDERED.

**SO ORDERED:**

4/4/13

  
\_\_\_\_\_  
**HON. ALISON J. NATHAN**  
**UNITED STATES DISTRICT JUDGE**